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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

b7

[redacted]

File: WAC 09 005 50548 Office: CALIFORNIA SERVICE CENTER Date: MAR 04 2010

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Pennsylvania limited liability company established in May 2008, states that it will operate a convenience store and gas station. It claims to be a subsidiary of [redacted], located in India. The petitioner seeks to employ the beneficiary as the manager of its new office in the United States for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that the U.S. company would employ the beneficiary in a primarily managerial or executive capacity within one year of the approval of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director should not have denied the petition based on a lack of evidence without first requesting all of the initial evidence required for a new office petition pursuant to 8 C.F.R. § 214.2(l)(3)(v)(C). Counsel contends that the director's decision "was largely based on conjecture and speculation." Counsel submits a brief and additional documentary evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the petitioner established that the United States operation, within one year of the approval of the petition, will support an executive or managerial position.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision making; and

(iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The petitioner must also establish that the beneficiary will have managerial or executive authority over the new operation. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a

"new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 7, 2008. The petitioner stated that the beneficiary will serve in the position of manager, with responsibility to "manage a Sunoco gas station and convenience store." The petitioner indicated that he will "oversee operations, supervise employees, deal [with] vendors," and noted that the company currently has three employees.

The petitioner submitted a copy of a "Business Contract of Sale," indicating the petitioner's agreement to purchase a Sunoco gas station and convenience store located in Treverton, Pennsylvania at a purchase price of $245,000. The petitioner did not submit any additional information regarding the beneficiary's proposed duties, the proposed nature of the office, the scope of the entity, its organizational structure, and its financial goals, or the size of the United States investment. *See generally*, 8 C.F.R. §§ 214.2(l)(3)(ii) and (v)(C).

On October 10, 2008, the director issued a request for additional evidence in which it referenced the regulations for new office petitions at 8 C.F.R. § 214.2(l)(3)(v). The director requested an original letter from the foreign company which indicates the proposed number of employees for the U.S. office and the types of positions they will hold; the amount of the U.S. investment; and the financial ability of the foreign company to pay the beneficiary and commence doing business. The director further requested that the foreign entity explain how the proposed business will support a managerial or executive capacity position within one year.

In addition, the director instructed the petitioner to submit a more detailed description of the beneficiary's proposed duties and the percentage of time he will spend on specific duties, as well as a proposed organizational chart for the U.S. company, and job duties, proposed salaries and educational requirements for each proposed position.

In response, the petitioner submitted a letter from the foreign entity's director, [redacted] dated November 3, 2008. [redacted] recited the statutory definitions for managerial and executive capacity, and indicated that the beneficiary would perform these duties while the "staff under the manager's supervision carries out the business." [redacted] letter included an organizational chart identifying a cashier, an account clerk, a clerk and an assistant manager who would report to the manager. [redacted] stated that all employees work full-time.

[redacted] indicated that the foreign entity has invested a total of $41,550.14 in the United States entity, and referred to an annexed "wire transfer and a copy of detail information statement." However, the only supporting documents submitted with the RFE response were a membership certificate, membership certificate register, and the petitioner's lease agreement.

The director denied the petition on December 31, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year of approval of the petition. In denying the petition, the director found that the petitioner's explanation of its proposed business was

vague and general, and that the petitioner failed to concretely describe its intended organizational structure. The director further found the evidence insufficient to establish that the petitioner would have the financial means to support a managerial or executive position within one year, noting that there was no evidence of a commitment from the claimed parent company as to when or if it intended to provide additional funding.

On appeal, counsel asserts that the director denied the petition based on the petitioner's failure to submit required evidence that was not requested in the director's RFE. Specifically, counsel asserts that the director's request for evidence did not adequately address the missing initial evidence required by the regulations governing "new office" petitions. Counsel contends that the director should not have denied the petition without first requesting all of the evidence that must be considered when adjudicating a petition for a new office. Finally, counsel asserts that, due to the missing evidence, the director's decision was "largely based on conjecture and speculation." Counsel asserts that the petitioner's initial evidence, considered with the new evidence submitted on appeal, are sufficient to establish eligibility for the benefit sought.

Upon review, counsel's assertions are unpersuasive. The petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

As a threshold issue, the AAO will address counsel's claim that the director's RFE failed to address all required evidence needed to determine the petitioner's eligibility for approval of a "new office" petition pursuant to 8 C.F.R. § 214.2(l)(3)(v).

Title 8 C.F.R. § 103.2(b)(8)(ii), the revision of which went into effect on June 18, 2007, states as follows:

> If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, [U.S. Citizenship and Immigration Services (USCIS)] in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by [USCIS].

Id.; *see also* 72 F.R. 19100 (April 17, 2007). As the instant petition was filed in 2008, the director was not obligated to request additional evidence if the petition fails to demonstrate eligibility for the benefit sought. Here, the petition was submitted with very little of the required initial evidence for a new office petition, and the director could have exercised her discretion to deny the petition without issuing the RFE. Nevertheless, the director issued a request for evidence advising that the requirements for a new office petition were not met, and referred the petitioner to the regulatory requirements for the requested classification. The RFE provided the petitioner with ample notice of the deficiencies in its petition, and contrary to counsel's assertions on appeal, the petitioner's response to the director's request did not adequately address all of those deficiencies.

Therefore, the AAO concurs with the director that the petitioner did not establish through its initial evidence and through its response to the RFE that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. An adverse determination made based on the petitioner's failure to submit required evidence is not based on "conjecture and speculation" on the part of the director, but rather

on the petitioner's failure to meet its burden of proof. Accordingly, the denial was appropriate, even though the petitioner may believe that it has evidence or argument to rebut the director's finding.

Finally, even if the AAO were to find that the director should have requested additional evidence not specifically requested in the RFE, the director's error would be harmless. If the petitioner has rebuttal evidence, the administrative review process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence. The petitioner has submitted additional evidence on appeal which will be discussed further below and which the AAO has taken into account before reaching its determination.

When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. As discussed above, the petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

Here, the evidence of record does not include a detailed description of the beneficiary's duties sufficient to establish that his proposed employment involves executive or managerial authority over the new operation, or that his duties will be primarily managerial or executive in nature. At the time of filing the petitioner indicated that the beneficiary "will manage a Sunoco gas station and convenience store," which will involve overseeing operations, supervising employees and dealing with vendors. Accordingly, the director requested a comprehensive description of the beneficiary's proposed duties, advising the petitioner that it should be specific and indicate the percentage of time the beneficiary would spend in each of the listed duties. In response to this specific request, [redacted] recited the statutory definitions directly from section 101(a)(44) of the Act and stated that the beneficiary will perform the duties described therein, and supervise four employees who will carry out the business. A recitation of the statutory definitions of managerial and executive capacity is not a "comprehensive description" of the beneficiary's proposed position in the United States. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner has neither

described the beneficiary's actual proposed duties in any detail nor established what proportion of the beneficiary's duties will be managerial in nature, and what proportion will be non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Although the petitioner has submitted a substantial amount of documentary evidence in support of the appeal, the record remains devoid of a description of the proposed duties beyond the brief statement made on the Form I-129. The petitioner indicates that the beneficiary will oversee the operations of a gas station and convenience store, supervise its employees and deal with vendors, but fails to explain how these duties rise to the level of managerial or executive capacity as contemplated by the statutory definitions. Furthermore, the AAO notes that the petitioner's "dealer supply franchise agreement" with Sunoco, which is submitted for the first time on appeal, includes the following provision at section 1.06:

> This agreement is made on the condition, and with the understanding that the Premises will be under the direct, daily on-Premises supervision of [redacted] and/or [redacted] who will personally manage and oversee daily operation of Premises at least 8 hours per day and 40 per week.

[redacted] signed the Form I-129 as the petitioner's "managing member," but neither [redacted] nor [redacted] is listed on the petitioner's organizational chart. This provision raises questions regarding the beneficiary's actual level of authority and discretion over the day-to-day operations of the petitioner's store. Overall, the petitioner's failure to describe the beneficiary's duties and level of authority is sufficient grounds for denial of the petition.

In addition, the petitioner has not adequately described or documented the intended scope of the U.S. office, its financial goals, and its anticipated organizational structure after one year.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner indicates that the beneficiary will be supervising a cashier, a clerk, an account clerk, and an assistant manager. According to the organizational chart, all four employees would report directly to the beneficiary. Although requested by the director, the petitioner opted not to provide position descriptions or educational requirements for the beneficiary's proposed subordinates. Again, any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Thus, the petitioner has not established that these employees possess or require a bachelor's

degree, such that they could be classified as professionals.[1] Nor has the petitioner shown that any of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors.

Although the petitioner indicates that one of the beneficiary's proposed subordinates is an "assistant manager," the evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. In the present matter, the totality of the record does not support a conclusion that the beneficiary's proposed subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates would perform the actual day-to-day tasks of operating the gas station and convenience store. The petitioner has not submitted evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees.

Furthermore, it is not clear how the petitioner's current staff of four employees would relieve the beneficiary from performing the non-qualifying duties inherent in operating the business. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS,* 923 F 2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava,* 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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[1] In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee.

According to the evidence submitted, the petitioner is required to keep its business open for 18 hours daily, or 126 hours per week. Although the petitioner claims that all of the employees work full-time, the petitioner has submitted recent payroll register reports on appeal which indicate that, between December 29, 2008 and January 11, 2009, only the assistant manager worked full-time (80 hours over two weeks). The clerk, account clerk and cashier each worked only 37 to 44 hours over the two-week period. The petitioner has not established that its reasonable needs would be met by one full-time and three part-time employees. Rather, it appears that the beneficiary would be required to participate in the day-to-day operations in order to keep the business operating during the extensive operating hours mandated by the petitioner's agreement with Sunoco. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner has not submitted a business plan or other evidence that would establish that the petitioner intends to increase its staffing levels or how it would otherwise grow to support a managerial or executive position within one year. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

For all of the above reasons, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity within one year, or that the U.S. company could support such a position. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the U.S. and foreign entities have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner stated on Form I-129 that it is an affiliate of the foreign entity. It also indicated that [redacted] of India owns a 51 percent interest in the U.S. company, which, if established, would be a parent-subsidiary relationship. In the RFE issued on October 10, 2008, the director requested copies of the petitioner's stock certificates, stock ledger, and evidence that the foreign entity paid for its interest in the U.S. company, including copies of wire transfers and/or canceled checks. In response, the petitioner submitted copies of its membership certificates indicating that the beneficiary owns 51 membership units and [redacted] owns 49 membership units in the U.S. company. The petitioner also submitted two wire transfer receipts showing that the beneficiary has made two transfers in the amounts of $13,119 and $10,800 to [redacted] for "living expenses." [redacted] stated in his letter that "the parent company has invested $41,550.14 by wire transfer," but no evidence of this investment was submitted.

The record as presently constituted does not support the petitioner's claim that the foreign entity is the petitioner's parent company, given that neither of its membership certificates were issued to the foreign entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, the record does not support a determination that the two companies have an

affiliate relationship as defined at 8 C.F.R. § 214.2(l)(1)(ii)(J). While it appears that the beneficiary owns a majority interest in the U.S. company, the evidence submitted on appeal, which includes the foreign entity's memorandum and articles of association, indicates that the beneficiary owns a 20% interest in that company. If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. Here, however, the beneficiary does not hold the requisite majority interest in the foreign entity. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.